

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
THOMAS K. KURIAN)	File No. 0002196859
Assignor)	
)	
AMTS CONSORTIUM LLC)	
Assignee)	
)	
Application for Consent to Partial Assignment of)	
the License for Station WQCP809)	

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2010

Released: September 22, 2010

By the Commission:

I. INTRODUCTION

1. This order affirms the processing of a request submitted by the proposed assignor to withdraw an assignment application, and the subsequent dismissal of a notification of consummation of the assignment submitted by the proposed assignee after the application was withdrawn. Specifically, this *Memorandum Opinion and Order* addresses an application for review filed by Environmental LLC (Environmental)¹ seeking Commission review of an *Order* by the Wireless Telecommunications Bureau's Mobility Division (Division).² In the *Order*, the Division affirmed the grant of a request by Thomas K. Kurian (Kurian) to withdraw an application to partially assign an Automated Maritime Telecommunications System station to Environmental, and affirmed the dismissal of a notification of consummation submitted by Environmental with respect to the same transaction. Environmental's arguments challenging those licensing actions and the Division's rejection of petitions for reconsideration of those actions are without merit, and we therefore deny its application for review of the Division's *Order*.

II. BACKGROUND

2. The Division consented to the above-captioned application, authorizing Kurian to partition and disaggregate to Environmental³ some of the spectrum authorized under the license for Station WQCP809, on April 7, 2006.⁴ On October 12, 2007, however, Kurian submitted a request

¹ Environmental LLC, Application for Review (filed May 21, 2009) (AFR). On May 22, 2009, Environmental filed an erratum version of the AFR, which deleted extraneous language.

² Thomas K. Kurian, *Order*, 24 FCC Rcd 4849 (WTB MD 2009) (*Order*).

³ At that time, Environmental operated under the name AMTS Consortium LLC (ACL). See, e.g., FCC File No. 0003649429 (filed Nov. 14, 2008). For convenience, we refer to ACL herein as Environmental.

⁴ See FCC File No. 0002196859 (filed June 14, 2005). The Division subsequently granted two requests for extension of time to consummate the transaction. See FCC File Nos. 0002749571 (filed Sept. 13, 2006), 0002996562 (filed Apr. 17, 2007).

through the Commission's Universal Licensing System (ULS) to withdraw the application. The Division processed the request on October 18, 2007, and the application was consequently designated as "Withdrawn" in ULS. Also on October 18, 2007, Environmental submitted a consummation notification, representing that the partial assignment had been consummated on October 10, 2007.⁵ The Division dismissed Environmental's notification of consummation, because Kurian had withdrawn the application before the notification was submitted.⁶

3. Environmental filed petitions for reconsideration of both the grant of Kurian's withdrawal request and the dismissal of its consummation notification.⁷ It argued that the withdrawal request was procedurally defective, and that the Division erred in processing it because the transaction had been consummated in fact before the withdrawal request was filed. The Division denied both petitions for reconsideration, finding that Environmental had not demonstrated any error in processing the withdrawal request or in dismissing Environmental's notification of consummation.⁸ In rejecting the argument that it was improper to grant the withdrawal request because the transaction had already been consummated, the Division stated that its licensing staff is not obligated, before processing a request to withdraw a consented assignment application for which no consummation notification has been received, to investigate whether the transaction remains unconsummated.⁹ The Division also reasoned that it would be illogical to accept and process a notification of consummation for a withdrawn assignment application because, upon the withdrawal of the application, the parties are divested of authority to consummate the transaction.¹⁰ Finally, the Division noted that the source of Environmental's grievance appeared to be that Kurian had breached a contract between the parties regarding an exchange of spectrum, and held that the courts, rather than the Commission, are the proper forum to resolve such contractual disputes.¹¹

III. DISCUSSION

4. Environmental argues that its consummation notification was timely and otherwise in compliance with the Commission's rules, and thus should have been processed as a ministerial manner.¹² It also contends that an assignment application cannot be withdrawn after the transaction is consummated in fact.¹³ Therefore, Environmental contends, the Division lacked authority to allow the application to be withdrawn, because no party has disputed Environmental's representation that the assignment was consummated before Kurian filed his withdrawal request.¹⁴ Environmental also argues that, by failing to credit Environmental's representation that the transaction had been consummated, the Division actually

⁵ The notification of consummation was filed manually by letter (and via e-mail), and electronically as a "Pleading." See Letter dated Oct. 18, 2007, from Warren Havens, President, ACL, to Office of the Secretary, FCC. Environmental was unable to file a notification of consummation electronically through the normal process because ULS does not accept notifications of consummation for assignment applications that are in "Withdrawn" status.

⁶ See FCC File No. 0003205477, Auto Letter Ref. No. 4671670 (generated Nov. 23, 2007).

⁷ AMTS Consortium LLC, Petition for Reconsideration (filed Nov. 19, 2007); AMTS Consortium LLC, Petition for Reconsideration (filed Nov. 23, 2007).

⁸ See *Order*, 24 FCC Rcd at 4850 ¶ 5, citing *WWIZ, Inc., Memorandum Opinion and Order*, 37 F.C.C. 685, 686 ¶ 2 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965); 47 C.F.R. § 1.106.

⁹ *Id.* at 4851 ¶ 8.

¹⁰ *Id.* at 4851-52 ¶ 8.

¹¹ *Id.* at 4852-53 ¶ 9, citing, e.g., *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950).

¹² See AFR at 2, citing 47 C.F.R. § 1.948(d) (permitting consummation notification to be filed up to thirty days after consummation).

¹³ *Id.*

¹⁴ *Id.* at 5-7.

interposed itself in a private contractual dispute, contrary to the Commission's policy.¹⁵

5. We find Environmental's arguments to be without merit, and we affirm the Division's decision. We are aware of no authority for the proposition that consummation of which the Commission has not been notified cuts off an assignor's ability to withdraw a consented assignment application, or the Commission's ability to act on such a request.¹⁶ The processing of Kurian's withdrawal request was a routine matter, and the dismissal of Environmental's subsequent notification of consummation was based on the simple fact that, at the time the notification was filed, there was no longer a consented assignment application to which it could apply.¹⁷

6. We also agree with the Division that granting Environmental the relief requested would have interjected the Commission into a private contractual dispute between Kurian and Environmental. Contrary to Environmental's arguments,¹⁸ the Division did not purport to determine whether the transaction should be deemed to have been consummated under state law; nor does anything in the *Order* affect the rights of the parties under state law. What the Division did in this case was to act according to its standard procedures in processing a withdrawal request, then dismissing an unprocessable consummation notification. By adhering to its routine practice, rather than departing from that practice at Environmental's behest, the Division's actions were consistent with the Commission's policy of not intervening in private contractual disputes that are the province of the courts.¹⁹

IV. CONCLUSION

7. We conclude that the Division correctly denied Environmental's petitions for reconsideration of the Division's actions in processing the withdrawal request and dismissing the notification of consummation, and we affirm the reasoning as well as the result of the *Order*.

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 5(c)(5), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), 303(r), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the application for review filed by Environmental LLC on May 21, 2009 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ *Id.* at 4-5, 7. Environmental argues that the Division "clearly erred in overturning a valid consummation under State contract law." *Id.* at 4.

¹⁶ The sole authority cited by Environmental, Mid Atlantic Network, Inc., *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd 7582 (MB AD 2008), is not germane. The passage cited by Environmental deals not with whether a state-law contractual question governs the Commission's policies governing license assignments, but with whether the Commission's licensing policies preempt state contract law. Indeed, the decision affirms "the Commission's longstanding policy that it will defer to courts of competent jurisdiction in the interpretation and enforcement of contractual rights between parties." *Id.* at 7586 ¶ 9, *citing* Arecibo Radio Corp., *Memorandum Opinion and Order*, 101 F.C.C. 2d 545 (1985).

¹⁷ We concur in the Division's statement that licensing staff is not required to verify that the transaction remains unconsummated before processing a request to withdraw an assignment application.

¹⁸ *See* AFR at 4-5, 7.

¹⁹ We note that Environmental remarks that, if we were to act favorably on the AFR, Kurian would be "free to sue [Environmental] in a court action." *Id.* at 8. So too is Environmental able to seek redress in the courts.